

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

LYNNE FREEMAN,

Plaintiff,

22 Civ. 2435 (LLS)

- against -

ORDER

TRACY DEEBBS-ELKENANEY, et al.,

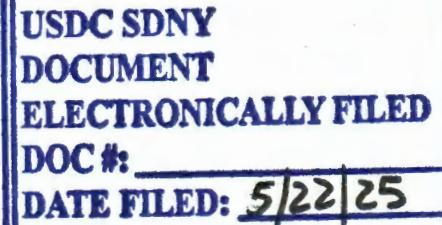
Defendants.

----- X

Plaintiff objects to Magistrate Judge Netburn's January 30, 2025 Order (Dkt. No. 425) and moves for the designation of Professor Reiss as an expert rebuttal witness, reversing her thrice-repeated refusals to do so, which plaintiff regards as clearly erroneous and contrary to law.

Such a reversal is not routine. On the contrary, the District Court should affirm the decision of the Magistrate Judge unless it "is clearly erroneous or is contrary to law." Fed. R. Civ. P. 72(a). An order is clearly erroneous if "the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." United States v. U.S. Gypsum Co., 333 U.S. 364, 395 (1948); accord Anderson v. City of Bessemer, 470 U.S. 564, 573 (1985).

In this case, no mistake has been made, and Magistrate Judge Netburn's Order is in full compliance with the law. In her August 1, 2024 Opinion and Order (Dkt. No. 362), Reiss's proposed testimony was found to be inadmissible because it considered only the similarities between the parties' works, and not their differences, and thus failed to address "highly relevant" evidence. Id. at 15-16. That ground has since been revisited, with the finding that "Reiss



enumerates many similarities that are plainly genre conventions and tropes but fails to identify them as such . . . significantly reducing the reliability of her report.” Id. at 17.

Plaintiff urges that Reiss’s testimony would be acceptable and useful, within limitations. On the contrary, its exclusion is prudent and is supported by a thorough knowledge of Reiss’s offerings.

Plaintiff’s objections are overruled and Magistrate Judge Netburn’s January 30, 2025 Order (Dkt. No. 425) is affirmed.

So Ordered.

Dated: New York, New York

May 22, 2025



LOUIS L. STANTON
U.S.D.J.